

Employee Complaint Implementing Procedures

General Grievance Procedures AM 111

Eligibility

Regular full and part-time non-management employees of the University of California are eligible to use the grievance process under Laboratory policy AM 111. Short and limited-term, casual, affiliates and contractors are not eligible to file complaints under AM 111. For purposes of this complaint policy and procedures, Laboratory management employees are listed at Table 200.VIII Management Positions in the Administrative Manual.

Laboratory management employees covered by the UC Executive Program serve at the pleasure of the Laboratory Director. Conditions and actions affecting an Executive Program member's employment are expected to be discussed between the Executive Program member and the Laboratory Director. If the Executive Program member's concerns cannot be resolved through such discussions, the member may submit them in writing to the University's Office of the President. The Office of the President shall then take such action as determined appropriate.

Laboratory management employees NOT covered by the UC Executive Program serve at the pleasure of their immediate supervisor and removal from the management position is not reviewable under AM 111. However, if the change in appointment involves a termination of employment, an allegation of discrimination, or medical separation, the manager may, after conclusion of the review by the manager's immediate supervisor, request in writing that the Laboratory Director appoint an Independent Party Reviewer as described in AM 111, Administrative Review.

Scope

Issues eligible for grievance are:

- involuntary separations
- discriminatory practices
- corrective action involving probation, demotion, suspension without pay, temporary or indefinite within range salary decrease or written warnings pertaining to such actions (Written Reprimands)

The written grievance must describe the specific actions that are requested for review, any provisions of Laboratory policies and procedures alleged to be improperly applied,

the manner in which they were improperly applied, how the employee was adversely affected, and the remedy requested.

Informal resolution of a grievance may be agreed to by the parties at any stage.

Time Frame

The written request for a formal review must be received by Employee Relations (HR-ER) within thirty (30) calendar days following the date on which the employee knew or could reasonably have been expected to have known of the event or action that resulted in the complaint or within thirty (30) calendar days from the date of the event or action, whichever occurs first.

Representation

Any party may be self represented or represented by another person at any stage of the grievance. A party intending to be represented shall notify HR-ER immediately of the name and address of the representative. HR-ER shall provide notice of such representation to the other party. The Laboratory will not pay the costs, expenses or legal fees of the employee, unless otherwise set forth in the final decision of the Laboratory Director or an arbitrator in binding arbitration.

Procedures

The employee should meet with HR-ER to discuss reviewable issues. The employee completes and submits an Employee AM 111 Complaint form. HR-ER reviews the complaint to determine whether the complaint is timely and whether it qualifies for review. An employee may appeal the HR-ER decision to the DHR within 5 calendar days from the date of notice of HR-ER's decision.

If the complaint is accepted, HR-ER will forward the complaint to the supervisor or manager (respondent) responsible for the aggrieved action for review and response. The respondent submits the response to HR-ER within 15 calendar days of receipt of the complaint. HR-ER forwards the response to the employee for the employee's decision to withdraw the complaint or proceed to the next level of the review. The employee must inform HR-ER of his or her decision within 5 calendar days; otherwise the employee's failure to respond within the time frame will result in the complaint being closed by HR-ER. If the respondent fails to submit the response within the designated time frame, HR-ER may consider legitimate requests for extensions or forward the complaint to the next step of review.

If the employee decides to proceed with the complaint process, the employee must

choose one of five processes in which to have their complaint reviewed: (1) Internal Hearing Committee; (2) Internal Hearing Officer; (3) External Hearing Officer; (4) Binding Arbitration and (5) Administrative Review.

Fees

For the Internal Hearing Committee, Internal Hearing Officer or Independent Party Reviewer processes, there are no administrative costs to the employee. For the External Hearing Officer process, the expenses related to the retention of an external hearing officer will be shared equally between the Laboratory and the employee.

For binding arbitration, the employee shall pay the AAA the sum of Three Hundred dollars (\$300.00) and the Laboratory will pay the next One Thousand Five Hundred dollars (\$1,500.00) of AAA cost and fees. AAA cost and fees above One Thousand Eight Hundred dollars (\$1,800.00) shall be shared equally by the parties. Unless specified in AM 111, or as determined by the arbitrator, each party shall pay its own cost and attorney's fees.

Remedies

If the management action grieved is determined by the Director to be in violation of Laboratory policies and procedures or if the action is determined not to be reasonable under the circumstances, the remedy shall not exceed restoring the employee's pay, benefits, or rights lost as a result of the action, less any income earned from any other employment.

The remedies available under binding arbitration are those permitted by applicable law; however, punitive damages will not be sought and the arbitrator does not have the authority to award punitive damages.

Conflict of Interest

A conflict of interest is anyone having a real or apparent personal, professional, business or financial relationship with either party that may influence the hearing authorities decision.

Internal Hearing Committee

Step 1: Within 5 calendar days from the date of HR-ER's request, the employee and management must submit a prioritized list of five employees to be considered for committee membership. The list may not include an employee of the same organization as the parties, and may not have a conflict of interest with either party. If either party fails to submit their list within the time period, HR-ER will select the committee members from the one submitted list. If both parties fail to submit their list, HR-ER will select the committee members.

Step 2: HR-ER shall exchange simultaneously to each party the list of names provided by the parties for the purpose of disqualifying names from the list. The remaining names on the list will be deemed acceptable for committee membership, and must be returned to HR-ER within 5 calendar days of receipt. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable (see page 3 above).

Step 3: Upon receipt of the accepted lists, HR-ER will appoint one member from each list. Within 5 calendar days from the date of notice of their appointment, the 2 selected members then identify and with HR-ER approval, appoint a third member to serve as the chair of the committee. The third member may not be an employee of the same organization as the parties and may not have a conflict of interest with either party.

Step 4: HR-ER will provide the parties and the committee the following documents:

- Employee complaint
- Management Response
- Employee Complaint Implementing Procedures
- Applicable Laboratory Policies

Step 5: Pre-Hearing Conference. HR-ER will schedule a Pre-Hearing Conference for the parties and the committee to identify the grievance issues, to discuss the roles of the participants and grievance procedures, and to schedule the grievance hearing date. The Pre-hearing Conference should be scheduled within 5 calendar days from the date that the third committee member is appointed.

No later than 7 calendar days before the grievance hearing, the parties are required to exchange their list of witnesses and copies of all evidence that will be introduced and submitted at the grievance hearing.

Step 6: Grievance Hearing. The hearing may not exceed 1 day unless approved by the Committee and HR-ER. The hearing is recorded and, except by mutual agreement of both parties, no new issues may be added to a grievance or introduced at a hearing that was not included in the original written grievance.

Hearing format. The hearing is *not* subject to the formal rules of evidence, civil procedure or other judicial or quasi-judicial rules, regulations or procedures. The hearing is closed to persons other than the parties, their representatives, HR-ER and those having the approval of the Committee. Witnesses are permitted to attend only for the purpose of testifying and may not attend other portions of the hearing.

The burden is on the respondent to demonstrate compliance with Laboratory policy and to demonstrate its reason for the action taken. Thereafter, the burden of proof shifts to the employee to demonstrate that, notwithstanding the facts presented by the respondent, there is reason to reverse or modify the action.

Responsibility and Authority of the Committee. The Committee will identify the grievance issues submitted in the original written grievance or hearing; conduct a hearing to determine the relevant facts and whether the management action grieved was in violation of Laboratory policies and procedures or reasonable under the circumstances; and submit a report, in writing, to the Director. The Committee will conduct the hearing and is empowered to exclude irrelevant or unduly repetitious evidence or testimony and may exclude or dismiss any person who disrupts the smooth and expeditious process of the hearing.

The Committee does *not* have authority to depart from or otherwise modify Laboratory policies and procedures.

Order of the Hearing.

I. Opening Statements

- Opening Statement by the respondent - 20 Minutes
The respondent summarizes the reason(s) for the action toward the employee and the evidence to be presented.
- Opening Statement by the employee - 20 Minutes
The employee summarizes his or her position and the evidence to be presented.

II. Presentations

- Respondent's presentation of evidence supporting the action
- Employee's presentation of facts supporting requested relief
- Witnesses Examination

Witness examination is informal but may include direct examination, cross-examination, redirect and re-cross examination with consent of the Committee.

III. Closing Statements

- Closing Statement by the respondent - 10 Minutes
- Closing Statement by the employee - 10 Minutes

Step 7: *Hearing Report.* Within five (5) calendar days of the conclusion of the hearing, the committee shall prepare a report that includes a brief description of each incident or management action grieved; each issue under review; the position of the parties; the findings of fact, conclusions and policy violations, if any; and a recommendation for resolution of each of the grievance issues (findings of fact shall be supported by the evidence and recommendations shall be supported by the findings). The report must be comprehensive and must provide sufficient information so that the director can use them as a basis for a decision and for determining any appropriate remedies. HR-ER will review the Committee report for completeness prior to forwarding it to the Director. HR-ER submits the completed report to the Director.

Step 8: *Director's Determination.* The recommendation of the Committee shall either be accepted, rejected, or modified by the Director within ten (10) calendar days after receipt of the Committee's report. The decision of the Director is final and shall be forwarded to HR-ER for implementation and appropriate action. This concludes the internal Hearing Committee process.

Internal Hearing Officer

Step 1: Within 5 calendar days from the date of HR-ER's request, the employee and management must submit a prioritized list of five employees to be considered as the hearing officer. The list may not include an employee of the same organization as the parties, and may not have a conflict of interest with either party. If either party fails to submit their list within the time period, HR-ER will select the hearing officer from the submitted list. If both parties fail to submit their list, HR-ER will select the hearing officer.

Step 2: HR-ER shall exchange simultaneously to each party the list of names provided by the parties for the purpose of striking any names objected to. The parties must return the list to HR-ER within 5 calendar days of receipt.

If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable.

Step 3: Within 5 calendar days of receipt of the employee list and the management list, HR-ER will appoint the hearing officer from the submitted lists. HR-ER will begin this process by contacting the first name on the employee list. If the first person contacted is not available or willing to serve as a hearing officer, HR-ER will contact the first person on management's list. HR-ER will alternate back and forth between the employee and the management list until a person agrees and is available to serve as the hearing officer.

Step 4: HR-ER will provide the parties and the hearing officer the following documents:

- Employee complaint
- Management Response
- Employee Complaint Implementing Procedures
- Applicable Laboratory Policies

Step 5: Pre-Hearing Conference. Within five (5) calendar days from the hearing officer's appointment, HR-ER will schedule a Pre-Hearing Conference for the parties and the hearing officer to identify the grievance issues, to discuss the roles of the participants and grievance procedures, and to schedule the grievance hearing date.

No later than 7 calendar days before the grievance hearing, the parties are required to exchange their list of witnesses and copies of all evidence that will be introduced and submitted at the grievance hearing.

Step 6: Grievance Hearing. The hearing may not exceed 1 day unless approved by the hearing officer and HR-ER. The hearing is recorded and, except by mutual agreement of both parties, no new issues may be added to a grievance or introduced at a hearing that was not included in the original written grievance.

Hearing format. The hearing is *not* subject to the formal rules of evidence, civil procedure or other judicial or quasi-judicial rules, regulations or procedures. The hearing is closed to persons other than the parties, their representatives, HR-ER and those having the approval of the hearing officer. Witnesses are permitted to attend only for the purpose of testifying and may not attend other portions of the hearing.

The burden is on the respondent to demonstrate compliance with Laboratory policy and to demonstrate its reason for the action taken. Thereafter, the burden of proof shifts to the employee to demonstrate that, notwithstanding the facts presented by the respondent, there is reason to reverse or modify the action.

Responsibility and Authority of the Hearing Officer. The hearing officer will identify the grievance issues submitted in the original written grievance or hearing; conduct a hearing to determine the relevant facts and whether the management action grieved was in violation of Laboratory policies and procedures or reasonable under the circumstances; and submit a report, in writing, to the Director. The hearing officer will conduct the hearing and is empowered to exclude irrelevant or unduly repetitious evidence or testimony and may exclude or dismiss any person who disrupts the smooth and expeditious process of the hearing.

The hearing officer does *not* have authority to depart from or otherwise modify Laboratory policies and procedures.

Order of the Hearing.

I. Opening Statements

- Opening Statement by the respondent - 20 Minutes
The respondent summarizes the reason(s) for the action toward the employee and the evidence to be presented.
- Opening Statement by the employee - 20 Minutes
The employee summarizes his or her position and the evidence to be presented.

II. Presentations

- Respondent's presentation of evidence supporting the action
- Employee's presentation of facts supporting requested relief
- Witnesses Examination
Witness examination is informal but may include direct examination, cross-examination, re-direct and re-cross examination with consent of the Committee.

III. Closing Statements

- Closing Statement by the respondent - 10 Minutes
- Closing Statement by the employee - 10 Minutes

Step 7: Hearing Report. Within five (5) calendar days of the conclusion of the hearing, the hearing officer shall prepare a report that includes a brief description of: each incident or management action grieved; each issue under review; the position of the parties; the findings of fact, conclusions, policy violations, if any; and a recommendation for resolution of each of the grievance (findings of fact shall be supported by the evidence and recommendations shall be supported by the findings). The report must be comprehensive and must provide sufficient information so that the director can use them as a basis for a decision and for determining any appropriate remedies. HR-ER will review the hearing officer's report for completeness prior to forwarding it to the Director. HR-ER submits the completed report to the Director.

Step 8: Director's Determination. The recommendation of the hearing officer shall either be accepted, rejected, or modified by the Director within ten (10) calendar days after receipt of the hearing officer's report. The decision of the Director is final

and shall be forwarded to HR-ER for implementation and appropriate action. This concludes the internal hearing officer process.

External Hearing Officer

Step 1: The employee may request a hearing officer that is external to the Laboratory, such as, a person from another UC campus or Laboratory, an arbitrator from American Arbitration Association, or any other individual who is acceptable by the Director of Human Resources to hear and decide employment disputes. The appointment of this external hearing officer will be made by the Director for Human Resources.

Step 2: HR-ER will provide the parties and the hearing officer the following

documents:

- Employee complaint
- Management Response
- Employee Complaint Implementing Procedures
- Applicable Laboratory Policies

Step 3: Pre-Hearing Conference. Within five (5) calendar days from the hearing officer's appointment, HR-ER will schedule a Pre-Hearing Conference for the parties and the hearing officer to identify the grievance issues, to discuss the roles of the participants and grievance procedures, and to schedule the grievance hearing date.

No later than 7 calendar days before the grievance hearing, the parties are required to exchange their list of witnesses and copies of all evidence that will be introduced and submitted at the grievance hearing.

Step 4: Grievance Hearing. The hearing may not exceed 1 day unless approved by the hearing officer and HR-ER. The hearing is recorded and, except by mutual agreement of both parties, no new issues may be added to a grievance or introduced at a hearing that was not included in the original written grievance.

Hearing format. The hearing is *not* subject to the formal rules of evidence, civil procedure or other judicial or quasi-judicial rules, regulations or procedures. The hearing is closed to persons other than the parties, their representatives, HR-ER and those having the approval of the hearing officer. Witnesses are permitted to attend only for the purpose of testifying and may not attend other portions of the hearing.

The burden is on the respondent to demonstrate compliance with Laboratory policy and to demonstrate its reason for the action taken. Thereafter, the burden of proof shifts to the employee to demonstrate that, notwithstanding the facts presented by the respondent, there is reason to reverse or modify the action.

Responsibility and Authority of the Hearing Officer. The hearing officer will identify the grievance issues submitted in the original written grievance or hearing; conduct a hearing to determine the relevant facts, conclusions, and whether the management action grieved was in violation of Laboratory policies and procedures or reasonable under the circumstances; and submit a report, in writing, to the Director. The hearing officer will conduct the hearing and is empowered to exclude irrelevant or unduly repetitious evidence or testimony and may exclude or dismiss any person who disrupts the smooth and expeditious process of the hearing.

The hearing officer does *not* have authority to depart from or otherwise modify Laboratory policies and procedures.

Order of the Hearing.

I. Opening Statements

- Opening Statement by the respondent - 20 Minutes
The respondent summarizes the reason(s) for the action toward the employee and the evidence to be presented.
- Opening Statement by the employee - 20 Minutes
The employee summarizes his or her position and the evidence to be presented.

II. Presentations

- Respondent's presentation of evidence supporting the action
- Employee's presentation of facts supporting requested relief
- Witnesses Examination
Witness examination is informal but may include direct examination, cross-examination, re-direct and re-cross examination with consent of the Committee.

III. Closing Statements

- Closing Statement by the respondent - 10 Minutes
- Closing Statement by the employee - 10 Minutes

Step 5: Hearing Report. Within five (5) calendar days of the conclusion of the hearing, the hearing officer shall prepare a report that includes a brief description of: each incident or management action grieved; each issue under review; the position of the parties; the findings of fact and policy violations, if any; and a recommendation for resolution of each of the grievance (findings of fact shall be supported by the evidence and recommendations shall be supported by the findings). The report must be comprehensive and must provide sufficient information so that the director can use them as a basis for a decision and for determining any appropriate remedies. HR-ER will review the hearing officer's report for completeness prior to forwarding it to the Director. HR-ER submits the completed report to the Director.

Step 6: Director's Determination. The recommendation of the hearing officer shall either be accepted, rejected, or modified by the Director within ten (10) calendar days after receipt of the hearing officer's report. The decision of the Director is final and shall be forwarded to HR-ER for implementation and appropriate action. This concludes the external hearing officer process.

Binding Arbitration

The procedures for arbitration shall be in accordance with the attached "**AAA Employment Dispute Resolution Rules: Expedited Procedures**"("Rules") (see page 21-23 of "Rules") and the "**Mutual Agreement to Arbitrate Disputed Claims**".

Step 1: The employee must submit to HR-ER a check made payable to AAA in the amount of Three Hundred dollars (\$300.00), and the signed "**Mutual Agreement to Arbitrate Disputed Claims**" ("Agreement") at the time of the employee's request for arbitration.

Step 2: HR-ER shall promptly notify AAA of the employee's request for arbitration and will submit documents supplied by the parties.

Step 3: See Rules and Agreement for the selection of the arbitrator and other applicable procedures.

Independent Party Reviewer

Step 1: If the employee requests to proceed to the next level of review, HR-ER will select an Independent Party Reviewer (IPR). The IPR may not be an employee of the same organization as the parties and may not have a conflict of interest with either party.

Step 2: The IPR will examine the issues under review, the positions of both parties, the facts of the case, and compliance or violation of an AM policy, practice, or directive. The IPR shall determine the facts based on whatever sources the IPR deems pertinent and reliable. The IPR shall interview concerned parties individually and may disclose to both parties information which is relevant and material to the issues and shall provide the opportunity for the parties to offer rebuttal information.

Step 3: The IPR will prepare a report within thirty (30) calendar days of appointment. This report shall include a brief description of each incident or management action under review; each issue under review; the position of the parties; the findings of fact, conclusions, policy violations, if any; and a recommendation for resolutions of each of the issues under review (findings of fact shall be supported by the evidence and recommendations shall be supported by the findings). The report must be comprehensive and must provide sufficient information so that the Director can use it as a basis for a decision and for determining any appropriate remedies. HR-ER will review the report for completeness prior to forwarding it to the Director. HR-ER submits the completed report to the Director.

Step 4: The recommendation of the IPR shall either be accepted, rejected, or modified by the Director within ten (10) calendar days of receipt of the IPR report. The decision of the Director is final and shall be forwarded to HR-ER for implementation and appropriate action. HR-ER will notify the parties of the Director's decision. This concludes the Administrative Review process.